

Distance Learning in Law

*By Steven C. Bennett**

I. INTRODUCTION.....	2
II. THE CURRENT STATE OF DISTANCE LEARNING IN LEGAL EDUCATION	2
III. THE BENEFITS OF ADDITIONAL DISTANCE LEARNING	4
IV. FOSTERING DISTANCE LEARNING.....	10
V. CONCLUSION.....	14

* The author is a partner at Jones Day in New York. The views expressed in this article are solely those of the author and should not be attributed to the author's firm or its clients.

I. INTRODUCTION

Distance learning has become an increasingly important teaching methodology for millions of students.¹ Distance learning can alter the place, time, and method of learning, offering multiple benefits to both teachers and students. Moreover, distance learning introduces opportunities for collaboration between educational institutions, and new means to extend the reach of existing structures.

Legal teaching, however, follows a model that has existed for decades.² The refusal to accept broader use of distance learning in legal education disheartens some reformers. But, the larger picture suggests that legal education, no matter its conservatism, and no matter the resistance of entrenched elites, must (and eventually will) accept distance learning. This Article outlines distance learning developments in the context of legal education to date, and suggests the path that legal education should eventually take in this area.

II. THE CURRENT STATE OF DISTANCE LEARNING IN LEGAL EDUCATION

The American Bar Association (“ABA”) controls standards for accreditation of American law schools.³ To date, the ABA has not

¹ See Jason Orgill & Douglas Hervey, *How Online Innovators Are Disrupting Education*, HARV. BUS. REV. (Nov. 4, 2011, 8:26 AM), <http://blogs.hbr.org/2011/11/how-online-innovators-are-disr/>. Recent statistics from 2011 suggest that four percent of undergraduate students and nine percent of post-baccalaureate students currently obtain their degrees entirely through distance education. See NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., THE CONDITION OF EDUCATION 120 (2011).

² See Comment from E. Scott Fruehwald to The ABA Task Force on the Future of Legal Education (Jan. 15, 2013) (on file with www.americanbar.org) (“Law schools have been using the same outdated method of legal education for over 100 years with a few tweaks at the edges. Law schools need to radically change their teaching methods in all classes.”); Letter from Jean M. Wenger, President, The American Association of Law Libraries & Kate Hagan, Executive Director, The American Association of Law Libraries, to The ABA Task Force on the Future of Legal Education (Feb. 6, 2013) (on file with www.americanbar.org) (“Lawyers historically have been slow to adapt and apply new technologies to the practice of law.”); see generally Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87 (2010).

³ See generally ABA ACCREDITATION STANDARDS, available at http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_programs/accreditation_standards

approved any full-time distance learning system for any three-year law school program.⁴ The ABA has, however, approved at least one distance learning Master of Laws program (“LLM”).⁵ Additionally, the ABA now permits up to twelve credit hours of distance learning for three-year conventional law school programs, but only after the first year of law school, and only when credits earned through distance learning are spread out over several semesters.⁶ The ABA also allows up to one-third of instruction in a conventional class to consist of “common components” of distance education, such as substantial online interaction, without being treated as “distance education.”⁷

Despite these limitations, a number of distance learning law schools have developed.⁸ Graduates of these distance learning schools, who wish to practice law, typically take the California bar examination—which allows graduates from non-ABA accredited law schools to take the exam.⁹ Such students may then choose to practice

.html. *See also* Robert K. Walsh, *The ABA’s Standards for the Accreditation of Law Schools*, 51 J. LEGAL EDUC. 427, 427 (2001) (noting that “[t]he Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association is recognized by the U.S. Department of Education as the ‘nationally recognized accrediting agency for schools of law.’”)

⁴ *See ABA-Approved Law Schools*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html.

⁵ *See Thomas Jefferson School of Law*, www.llmprogram.org (describing Thomas Jefferson Law School online LLM program).

⁶ *See* STANDARDS FOR APPROVAL OF LAW SCHOOLS § 306(d)-(e) (2013-2014), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf.

⁷ *See id.* § 306, interpretation 3 (“Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as ‘distance education’ . . . even though they also include substantial on-line interaction or other common components of ‘distance education’ courses.”).

⁸ Examples include Taft Law School, Concord Law School, and Abraham Lincoln Law School.

⁹ Cal. Bus. & Prof. Code § 6060(e); *see also* Rule 4.26(A) of the Rules of the State Bar of California (2007). However, students seeking admission to the California bar who have not attended an ABA accredited law school must take the “First Year Law Students Examination,” otherwise known as the “Baby Bar,” after the first year of legal education. Only if these students receive a passing score on the Baby Bar can they continue in the accredited law school and, upon graduation, take the regular California bar examination. Cal. Bus. & Prof. Code § 6060(h).

in California or seek reciprocity from other states. On the other hand, for some students, the object of law school training may not include bar licensure. Business people, government employees, and social-service professionals, for example, may seek the knowledge and understanding associated with a law degree, even though they never plan to practice in traditional legal jobs. For these individuals, a distance learning program may be ideal.

In the Continuing Legal Education (“CLE”) context, distance learning has gained a solid hold. States require that lawyers maintain skills and keep up with practice developments as a condition to maintaining their licenses to practice, making CLE credits a regular concern for practicing lawyers.¹⁰ In states that are larger and less populated, the ability to obtain CLE instruction at “live” events is cumbersome and expensive. Thus, a variety of distance learning programs— webinars, teleconference briefings, and lecture downloads, among others— have become common ways to conduct CLE programs.¹¹

III. THE BENEFITS OF ADDITIONAL DISTANCE LEARNING

The recent economic downturn in the legal market and the substantial unemployment and underemployment of lawyers, especially recent graduates, has been the subject of front-page stories in the popular press.¹² Meanwhile, the legal market suffers from

¹⁰ See, e.g., Pa.R.C.L.E., Rule 105(a)(1) (“Every active lawyer shall annually complete, during the compliance period to which he or she is assigned, the CLE required by the Board pursuant to these rules and established in Board regulations.”); N.J. R. C.L.E., Reg. 201 (“Every active lawyer shall complete twenty-four credit hours of continuing legal education every two years.”).

¹¹ See Gary Toohey & Cynthia K. Heerboth, *The Changing Face Of Continuing Legal Education*, PRECEDENT (Spring 2011), <http://www.mobar.org/uploadedFiles/Home/Publications/Precedent/2011/Spring/The%20Changing%20Face%20of%20Continuing%20Legal%20Education.pdf> (noting changes in technology, demographics and the economy that have affected CLE methods); see also *Putting Technology To Work For You*, 26 OHIO LAWYER 38 (July/Aug. 2012), available at http://downloads.ohiobar.org/pubs/Ohio_Lawyer/0h_Lawyr_JulyAug2012.pdf (“Technology is having a dramatic impact on the practice of law . . . Lawyers can now take CLE online from the comfort of their own homes or offices according to their schedules.”).

¹² See ABA Survey Highlights Changes In Law School Curricula, LAWUPDATES.COM (July 5, 2012),

persistent unavailability of low-cost or *pro bono* lawyers to serve the needs of the poor, elderly, disabled, rural, immigrant, and other populations, for whom service through “big law” firms remains impossible due to the astronomically high rates such firms charge.¹³ The existence of employment woes for many lawyers and the lack of service for a substantial group of clients in need suggest that law schools should aim to produce more lawyers willing and able to take on these types of clients.¹⁴ However, a typical law school education is extraordinarily expensive, and the student loan debt associated with law school often forces new lawyers to pursue high paying positions

http://www.lawupdates.com/industry_news/entry/aba_survey_highlights_changes_in_law_school_curricula/ (noting that law schools have had to respond to “a changing legal job market amid an economic downturn”); Katherine Mangan, *As Student Interest In Law Schools Drops, ABA Moves To Tighten Accrediting Standards*, THE CHRON. OF HIGHER EDUC. (Mar. 20, 2012), <http://chronicle.com/article/As-Student-Interest-in-Law/131257/> (noting lawsuits and “scam blogs” started by law students complaining of lack of jobs); see also A. Benjamin Spencer, *The Law School Critique In Historical Perspective*, 69 WASH. & LEE L. REV. 1949 (2012) (suggesting that current critiques of law school represent a “perfect storm: the confluence of softness in the legal employment market, the skyrocketing costs of law school, and the unwillingness of clients and law firms to continue subsidizing the further training of lawyers who failed to learn how to practice in law school”).

¹³ See Letter from Frank H. Wu, Dean, Univ. Cal. Hastings Coll. of Law, to ABA Task Force on the Future of Legal Educ., (Nov. 30, 2012), available at <http://www.uchastings.edu/news/articles/2012/11/aba-task-force-dean-wu.php> (noting “tremendous quantity of legal work that is not being done” for “ordinary citizens.”); Matt Leichter, *U.S. Legal Sector Contracting Even As Nation’s Economy Recovers*, THE AMLAW DAILY, Mar. 6, 2013, http://www.americanlawyer.com/PubArticleALD.jsp?id=1202591158008&US_Legal_Sector_Contracting_Even_As_Nations_Economy_Recovers (explaining that poor people “are more likely to spend their last dollars on legal services, not their first”); Richard L. Marcus, *The Electronic Lawyer*, 58 DEPAUL L. REV. 263, 280 (2009) (“Many are presently priced out of the American legal [services] market.”).

¹⁴ See Cathryn Miller-Wilson, *Harmonizing Current Threats: Using The Outcry For Legal Education Reforms To Take Another Look At Civil Gideon and What It Means To Be An American Lawyer*, 13 MD. L.J. RACE REL. GEN. & CLASS (forthcoming 2013) (noting “opportunity” in midst of “financial crisis” that has hit law firms and law schools, to expand job opportunities for lawyers and public service for low-income clients); Kendall Coffey, *Underserved Middle Class Could Sustain Underemployed Law Graduates*, LAW.COM (Aug. 15, 2012), <http://www.law.com/jsp/article.jsp?id=1202568370667> (recognizing that “law students laden with student loans might prefer careers outside of law to the modest income a middle-class practice would bring,” but arguing that new attorneys should be “willing and able to represent America’s middle class” in light of the downsizing and layoffs occurring for big law firms).

over jobs in public service, government, and legal aid.¹⁵ Distance learning could lower the cost of legal education in several ways; for example, by allowing recent graduates to take on jobs that offer a lower salary, and by assisting those who cannot afford high-end law schools. For example, basic introductory lectures may be recorded and reused so that law schools will not have to compensate professors for as much in-class time.

In addition to lowering the cost of legal education, distance learning can provide flexibility not available in conventional “bricks and mortar” education.¹⁶ For example, second career students may have substantial family, work, and other commitments that make it difficult to devote three (or more) years to a residential education program.¹⁷ Additionally, lawyers already in practice may wish to

¹⁵ See William K.S. Wang, *The Restructuring of Legal Education Along Functional Lines*, 17 J. CONTEMP. LEGAL ISSUES 331, 333 (2008) (“A major problem confronting law schools today is the rapidly increasing cost to students.”). For a critique of the legal academic structures that produce high tuition costs, see Debra Cassens Weiss, *‘Leftist Law Professors’ Stayed Silent On High Tuition, While Enjoying ‘Sweet Ride’, Says Law Prof*, A.B.A. J., (May 2, 2013), http://www.abajournal.com/news/article/jaccuse_law_prof_says_hypocrite_liberal_colleagues_stayed_silent_on_high_tu; see Stanley Fish, *The Bad News Law Schools*, N.Y. TIMES (Feb. 20, 2012), <http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/> (“[T]he kind of lawyering poor and disadvantaged communities require does not bring in enough money to attract newly minted lawyers trailing clouds of debt.”); see also Jeremy Paul, *Only Law Schools That Tackle Costs, Graduate Client-Centered Lawyers Will Survive—A Dean’s View*, A.B.A. J. (Feb. 21, 2013), http://www.abajournal.com/legalrebels/article/only_law_schools_that_tackle_cost_graduate_client-centered_lawyers (“[C]osts are too high compared to the expected earnings of many law school graduates.”).

¹⁶ Distance learning may also assist lawyers in learning about technology enhancements that can improve their efficiency in practicing law in general. See Lee Pacchia, *With Radical Changes, Law Firms Can Beat Recession*, A.B.A. J. (May 2, 2013), http://www.abajournal.com/news/article/bvideo_with_radical_changes_law_firms_can_beat_recession_says_susskind/ (stating that lawyers need to be trained to work with “technologies and processes, not just to counsel clients one-on-one.”).

¹⁷ See Andrew S. Rosen, *Concord University School Of Law’s On-Line Law Degree Program*, 15 ST. JOHN’S J.L. COMM. 311, 312 (2001) (explaining that Concord University’s distance learning program is geared toward “people who have job responsibilities, who are in the work force and typically have jobs that extend beyond 9 to 5.”); Gerald C. Van Dusen, *The Virtual Campus: Technology And Reform In Higher Education*, 25 ASHE-ERIC HIGHER EDUC. REPORT at 116 (1997) (“The sudden interest and explosive growth of distance learning can be directly attributed to a pent up demand by older working adults for whom various constraints prevent regular attendance on campus.”); Tony Mauro, *Online Law School Grads Defy Expectations*,

change the focus of their professional endeavors through a graduate LLM or similar program, but may not have the time or flexibility to permit even a single year of on-site education.¹⁸ Foreign lawyers interested in developing familiarity with the American legal system—even those without dual qualification to practice law—may also find the cost and burden of traveling to the United States for an extended period a barrier to pursuing a conventional American legal education. Distance legal education offers a means for these students to get the legal education they would otherwise have to forgo.¹⁹

Distance learning offers other significant benefits to professors and students, even in the ordinary law school setting.²⁰ For example, recorded lectures may replace or supplement the standard in-class lecture. Students may view the recorded lectures at their leisure and come to class prepared to ask questions, discuss hypothetical scenarios, and actively apply their learning, versus more passive learning through in-class lectures alone.²¹ Additionally, the ability to record lectures and disseminate them online can make particularly

LAW.COM (May 8, 2008), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202421153757&Online_law_school_grads_defy_expectations (explaining that online law students often are “nontraditional career changers, at-home parents[,] and the like— people who for financial or family reasons [cannot] drop everything, move near a physical law school[,] and enroll full time”).

¹⁸ See Rosen, *supra* note 17, at 317 (explaining that “many students at Concord are seeking their legal education to advance their existing careers, rather than to practice law in states outside California”).

¹⁹ See Larry Cata Backer & Bret Stancil, *Global Law Schools On US Models: Emerging Models Of Consensus-Based Internationalization Or Markets-Based Americanization Models Of Global Legal Education*, 4 EDUC. & L. REV. 8, 10 (2011) (“Some efforts now suggest possibilities of distance education in the context of the internationalization of legal education.”).

²⁰ One commentator suggests that, given the crisis in legal education, schools that offer “newer, innovative, less-costly programs” will prosper. Richard A. Matasar, *The Viability Of The Law Degree: Cost, Value, And Intrinsic Worth*, 96 IOWA L. REV. 1579, 1580 (2011).

²¹ See Todd E. Pettys, *The Analytic Classroom*, 60 BUFF. L. REV. 1255, 1263 (2013), www.works.bepress.com/todd_pettys/19 (arguing that web-based technologies mean that faculty can introduce students to doctrinal frameworks before they enter the classroom); Andrea L. Johnson, *Distance Learning and Technology in Legal Education: A 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 241 (1997) (explaining that “[e]lectronic tools . . . tend to be interactive, thus requiring more active and independent participation by the student” and that “[i]nteractive instruction can often challenge the students more than traditional methods.”).

extraordinary teachers, who might otherwise be unavailable due to retirement or commitments at other institutions, more available to students across a wider spectrum. Further, distance learning may enable students to view lectures from a variety of professors, which may help students to gain insight from more than one approach. Professors, in turn, need not teach from a relatively repetitive lecture series, but can design an in-class curriculum based on stimulating problems, recent developments, and even multi-disciplinary approaches.²² In addition, adjunct professors, often busy in their areas of practice, may find the system particularly appealing for its flexibility.²³

Distance learning need not solely take the form of recorded lectures.²⁴ Live class sessions streamed to students outside the classroom or even the campus are possible.²⁵ The physical connectivity of such programs may offer particular advantages to students and professors. For example, student questions can be more

²² See Matthew T. Brodie, *Open Access To Law School Teaching: A New Approach To Legal Education*, 10 LEWIS & CLARK L. REV. 885, 897 (2006) (stating that the use of technology in legal education would allow professors to “collaborate on the [class] materials from across the country— with professors in a range of disciplines.”). Bodie has also argued that another potential benefit of technology in legal education is the potential for an “electronic” casebook, which can be more easily updated and supplemented than conventional textbooks. See Matthew Bodie, *The Future Of The Casebook: An Argument For An Open-Source Approach*, 57 J. LEGAL EDUC. 10 (2007); Michael A. Geist, *Where Can You Go Today?: The Computerization Of Legal Education From Workbooks To The Web*, 11 HARV. J. L. & TECH. 141 (1997).

²³ See Steven C. Bennett, *Bringing Lawyers Back On Campus*, 16:2 THE LAW TEACHER 14 (2010).

²⁴ See Barry Currier, *Improve Legal Education Via Technology & Online Learning*, LEGAL REBELS (Oct. 15, 2009), http://www.abajournal.com/legalrebels/article/barry_currier_improve_legal_education_via_technology_online_learning (options for use of technology “range from the simple— make recordings of every class available to students to use for study and review— all the way through to programs that rely on distance learning, either blended programs or fully online programs”); Brodie, *supra* note 22 at 897-98 (discussing the benefits that technology such as online discussion boards and study groups can provide to legal education).

²⁵ See Richard Westin, *The Need For Prompt Action To Revise American Law Schools* (2012), [available at](http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=richard_westin) http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=richard_westin (discussing how one example of such a system appears at Dickinson Law School, which integrated two separate campuses into a single institution, with classes taught live at one campus and broadcast to students at the other campus).

broadly gathered, versus simply calling on a single student in class.²⁶ Moreover, professors may use the interaction to assess student understanding of the material, and shape the discussion to focus on any weak areas. Even if not all questions can be answered live during the class session, questions and answers may be posted online for students to consider later. Furthermore, the streaming program need not originate from any particular location; thus, professors traveling or visiting at another school, or guest lecturers not easily within reach of the school, may contribute to the student experience.²⁷ Many interscholastic clubs, study groups and job placement efforts also easily fit a distance learning model.²⁸ Additionally, clinics and other practical experiences, such as mock trials and negotiations, could flourish through an inter-scholastic network.²⁹ The teaching of legal

²⁶ See e.g., Patti Shank, *Activities 101: Considering Collaboration*, in STUDENT COLLABORATION IN THE ONLINE CLASSROOM 12, 13, ONLINE CLASSROOM (Rob Kelly ed., 2013), available at <http://www.cincinnati.state.edu/online/faculty-resources/Student%20Collaboration%20in%20the%20Online%20Classroom.pdf> (explaining how an online class would allow students to post questions in a discussion forum so that questions may be answered quickly by both peers and instructors); see also HANOVER RESEARCH COUNCIL, BEST PRACTICES IN ONLINE TEACHING STRATEGIES 15 (July 2009), available at <http://www.uwec.edu/AcadAff/resources/edtech/upload/Best-Practices-in-Online-Teaching-Strategies-Membership.pdf> (suggesting that online discussion forums promote interaction among students and instructors, which is “particularly important in online instruction.”)

²⁷ See Carole Silver, *The Variable Value Of U.S. Legal Education In The Global Legal Services Market*, 24 GEO. J. LEG. ETHICS 1, 9-10 (2011) (noting value of foreign law perspectives for education of United States lawyers, and that instructors from foreign jurisdictions may be particularly useful).

²⁸ See Nicolas P. Terry, *Bricks Plus Bytes: How ‘Click-and-Brick’ Will Define Legal Education Space*, 46 VILL. L. REV. 95, 121 (2001) (arguing that use of the internet in legal education would allow students “access to every other student’s notes, outlines or professorial hypotheticals all being updated in real time”); See Vincent D. Rougeau, *Law Schools Should Consider Med-School Model*, AM. BAR. ASS’N, Mar. 13, 2013, http://www.abajournal.com/legalrebels/article/law_schools_should_consider_med-school_model—a_deans_view (“Law schools could marshal their alumni through social media to create networks for apprenticeships and job placement.”) (additionally, noting the possibility of a virtual help desk for the career services office); See Vincent D. Rougeau, *Law Schools Should Consider Med-School Model*, AM. BAR. ASS’N, Mar. 13, 2013, http://www.abajournal.com/legalrebels/article/law_schools_should_consider_med-school_model—a_deans_view (“Law schools could marshal their alumni through social media to create networks for apprenticeships and job placement.”).

²⁹ See Michelle Lore, *Online Law School*, MINN. LAWYER (Sept. 3, 2007),

technology courses may also improve through distance education, especially that which takes place online.³⁰

IV. FOSTERING DISTANCE LEARNING

There exist some critics who highlight the potential limitations and unique problems associated with distance learning, especially in the law school context.³¹ However, academics as a whole— outside law school— and even the ABA (to a limited extent) generally recognize that distance learning can be a valuable addition to conventional

<http://minnlawyer.com/2007/09/03/online-law-school> (“[M]any supporters of correspondence law schools argue that the lack of face-to-face contact is immaterial, in part because classes are highly interactive and students are able to collaborate on projects and conduct negotiations and trials through video and e-mail settings.”); John Mayer, *Alternate Futures: The Future Of Legal Education*, 1 J. LEGAL SCH. COMPUTING 5, 7 (1999) (“[A] geographically dispersed mini-consortia [of law schools] could leverage its underutilized buildings and classrooms to provide office space and training to students for the practical portion of their education.”).

³⁰ See Daniel Martin Katz & Renee Newman Knake, *How This Duo Is Trying To Reinvent Law School*, AM. BAR ASS’N., May 9, 2013, http://www.abajournal.com/legalrebels/article/how_this_duo_is_trying_to_reinvent_law_school (“[P]art of the solution to the crisis currently facing the law profession and legal education involves principles of technology, legal analytics, design thinking, and the advent of new, process-driven delivery models.”); Richard Granat, *12 Top Law Schools Teaching Law Practice Technology*, LAWYERING BLOG (May 6, 2013), www.elawyeringedux.com (noting need for training in “the intersection of internet technologies and the practice of law,” and concluding “[i]t is no longer possible to teach law practice management without taking into account the impact of information technology on law practice”).

³¹ See Abigail Cahak, *Beyond Brick-And-Mortar: How (Cautiously) Embracing Internet Law Schools Can Help Bridge The Legal Access Gap*, 2012 J. OF L. TECH. & POLICY 495, 520-25 (summarizing common criticisms and responses thereto); Katherine S. Magnan, *Justice Ginsburg Questions Internet-Only Law School*, THE CHRONICLE OF HIGHER EDUCATION (Sept. 24, 1999), <http://chronicle.com/article/Justice-Ginsburg-Questions/31346> (discussing how Justice Ginsburg, for one, famously questioned the viability of internet-only law school training); see also Stephen M. Johnson, *www.lawschool.edu: Legal Education in the Digital Age*, 2000 WIS. L. REV. 85 (2000) (outlining potential disadvantages of online legal instruction); Robert H. Thomas, “Hey, Did You Get My E-Mail? Reflections Of A Retro-Grouch In The Computer Age Of Legal Education”, 44 J. LEGAL EDUC. 233, 242-46 (1994); Marie S. Newman, *Not The Evil TWEN: How Online Course Management Software Supports Non-Linear Learning In Law Schools*, 5 J. HIGH TECH. L. 183, 196 (2005) (noting lack of any “formal, large-scale empirical study to gauge the effect of technology on students who are entering law school”). See generally Allison A. Carr-Chellman, *Desperate Technologists: Critical Issues In E-Learning And Implications For Higher Education*, 41 J. THOUGHT 95 (2006); Risa L. Lieberwitz, *The Corporatization Of The University: Distance Learning At The Cost Of Academic Freedom?*, 12 B.U. PUB. INT. L.J. 73 (2002).

teaching methods.³² In an effort to encourage the distance learning model, some have challenged the ABA monopoly over accreditation and state bar admission rules that generally preclude one from practicing law without graduating from an ABA-approved school.³³ However, it is not likely that ABA conservatives will change their views in response to efforts from outsiders.³⁴ Rather, change must come from within, by demonstrating the success of distance learning systems to ABA insiders.³⁵

³² See Letter from Michael A. Olivas, President of Ass'n of Am. Law Schs., to Hulett H. Askew, Consultant on Legal Educ. (Mar. 28, 2011), *available at* <http://www.aals.org/advocacy/Olivas.pdf> (statement of Mr. Michael A. Olivas: "We recognize the value of distance learning, particularly where it allows advanced students to get specialized instruction in courses that a given school cannot afford to teach.").

³³ See Lloyd Cohen, *Comment On The Operation Of The Legal Education Cartel*, 17 J. CONTEMP. LEGAL ISSUES 25, 27-28 (2008) (noting the heavy influence the ABA has on legal education); *see also* Megan Boehnke, *LMU Suing American Bar Association Over Law School Accreditation*, KNOXVILLE NEWS SENTINEL (Dec. 22, 2011, 12:36 PM), *available at* <http://www.knoxnews.com/news/2011/dec/22/lmu-suing-american-bar-association-over-law> (discussing a lawsuit alleging that ABA denied accreditation to school as means of limiting number of lawyers in the country); Anthony Lin, *ABA Accreditation For Law School In China Runs Up Against U.S. Job Fears*, LAW.COM (May 24, 2011), http://www.law.com/jsp/article.jsp?id=1202494947655&ABA_Accreditation_for_Law_School_in_China_Runs_Up_Against_US_Job_Fears; Betsy McKenzie, *ABA As Gatekeeper Of Legal Education*, OUT OF THE JUNGLE BLOG (Dec. 6, 2006, 1:27 PM), www.outofthejungle.blogspot.com; Elie Mystal, *The American Bar Association Will Have An Online Law School Guy As Its Top Adviser On Legal Education*, ABOVE THE LAW (Apr. 25, 2012, 11:48 AM), *available at* <http://abovethelaw.com/2012/04/the-american-bar-association-will-have-an-online-law-school-guy-as-its-top-adviser-on-legal-education> ("At some point, the Department of Education is going to have to step in and put a stop to the [ABA's] monopoly over the standards for legal education."); David Segal, *For Law Schools, A Price To Play The ABA's Way*, N.Y. TIMES (Dec. 17, 2011), http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all&_r=0.

³⁴ See Michael L. Coyne, *ABA And Legal Education: Change Won't Come From Within*, NAT'L LAW JOURNAL (May 8, 2013), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202599229647> (arguing that the ABA resists reform efforts by the Department of Education, the Department of Justice, and the media because the ABA task force is comprised of those who dislike reform); Mark Hansen, *ABA Committee Members Show No Inclination To Start Over On Accreditation Standards Review* (Apr. 2, 2011, 5:03 PM), http://www.abajournal.com/news/article/aba_committee_members_show_no_inclination_to_start_over_on_accreditation_s.

³⁵ See Symposium, *A New Place for Flexible Programs?*, 38 SW. L. REV. 635, 636 (2009) (arguing that online law school will not be successful unless reformers show clearly

There are several ways that law schools can demonstrate the success of distance learning efforts. Existing distance learning law schools have already adopted measures of what they consider to be indications of success, but many other measures could emerge.³⁶ For example, in the legal scholarship field, academics frequently measure the number of times their papers are downloaded or cited in other articles and judicial opinions.³⁷ Similarly, legal academics might begin to tout the popularity of their materials—for example, the number of “hits” on their lectures—as an indication of their teaching skills and the persuasiveness of their views. Additionally, other academic and professional institutions might have access to these lectures and feature those that provide particularly useful insights.³⁸ When formed as website locations, such centers may operate free of conventional legal academic structures.³⁹ These websites might compete among themselves for the largest viewership. Additionally, “superstar” academics might emerge from the distance learning sphere, leading

that online law school can deliver a “sound program of legal education.”)

³⁶ See *id.* at 636, 644 (using bar passage rates for graduates of online versus conventional law schools and retention rates of online law students to demonstrate the success of online law school); Press Release, *Concord Law School of Kaplan Univ., Law Students Give Concord's Online Program High Satisfaction and Performance Ratings* (Jan. 13, 2010), available at <http://eon.businesswire.com/news/eon/20100113005364/en> (arguing that surveys of student satisfaction with online legal education programs may also provide useful information about their efficacy.)

³⁷ See Brian Leiter, *New SSRN Download Rankings—By Scholar and by School*, LEITER REPORTS: A PHIL. BLOG (Mar. 23, 2005, 6:16 AM), http://leiterreports.typepad.com/blog/2005/03/new_ssrn_downlo_3.html (providing a ranking of legal scholars based on the total number of downloads their papers have received from the Social Science Research Network website); Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L. REV. 1127, 1129 (2006) (discussing possibility that success of legal blogs can be gauged by using a blog counter that permits readers to view the amount of visitors to the blog).

³⁸ See Steve Sheppard, *The Role Of The Professor In The High-Tech Law School*, 1 J. L. SCH. COMPUTING 3 (1999), available at <http://jlsc.classcaster.net/volume-1-number-1/the-role-of-the-professor-in-the-high-tech-laws-school> (explaining that a distance learning lecturer “may support many more courses than the 20th Century stand-up lecturer,” which means that “a single teacher may be able, particularly with the aid of non-lawyer guidance and career-counseling specialists to teach four or five times the number of students.”)

³⁹ See Michael Ariens, *Law School Branding And The Future Of Legal Education*, 34 ST. MARY'S L.J. 301, 360 (2003) (“One may attract students by marketing an attractive package of distinguished faculty as lecturers in cyberspace, joined by ‘teaching assistants’ found at the geographic location at which the law school is located.”).

others to follow suit.⁴⁰

Conventional law schools may find and, in many cases, have already found distance learning a viable source of additional student enrollment, even if ABA accreditation standards do not change. For example, law schools may offer paralegal training and non-degree certificate programs based on coursework offered via the in-class method, but modify the system of presentation for use in distance learning.⁴¹ Distance learning also provides a way for foreign students to access United States programs without having to travel outside of their home country, which would likely increase enrollment of foreign students.⁴²

Ultimately, one or more individual states may choose to loosen the grip of the ABA on the process of admission to the bar.⁴³ States need not insist on ABA accreditation as a basis for bar admission. Instead, in setting their own standards, states could recognize individual distance learning programs or design their own set of criteria for the particular form of distance education necessary for bar admission. Establishment of “best practice” protocols for distance law school education may contribute greatly to this eventual trend, making it easier for a state to follow a nationally recognized standard,

⁴⁰ See Karen Paulson, *Reconfiguring Faculty Roles For Virtual Settings*, 73 J. HIGHER EDUC. 123, 135 (2002) (“Imagine a few dozen scholars with national reputations and expertise in these courses. World class faculty members (individually or in teams) could present this instructional material in a format both absorbing to watch and enticing to use.”); Donald J. Weidner, *The Crises Of Legal Education: A Wake-Up Call For Faculty*, 47 J. LEGAL EDUC. 92, 100 (1997) (predicting that use of technology will permit schools to “cherry-pick faculty from other law schools”).

⁴¹ See *Top Online Paralegal Programs* (Sept. 13, 2013), <http://www.online-paralegal-programs.com/top-online-paralegal-programs/> (noting that the online paralegal program at Globe University, for example, “ha[s] the same focus and objectives as the campus-based version[.]”).

⁴² See Carole Silver, 3 OÑATI SOCIO-LEGAL SERIES 533, 538-39 (2013) (arguing that one way to cope with declining law school enrollment is to increase enrollment of international students in U.S. law schools); HANOVER RESEARCH, REVENUE GENERATION STRATEGIES FOR LAW SCHOOLS 7 (Aug. 2011) (explaining that one potential strategy for generating additional revenue is to build on international student programs).

⁴³ Cahak, *supra* note 31 at 529 (“the more likely— and proper— avenue for change lies in the hands of individual state bar associations that choose to follow in the footsteps of California and others by providing greater flexibility and acceptance for online law [graduates]”).

even if not endorsed by the ABA.⁴⁴ The ABA itself may consider additional relaxation of its rules regarding distance learning.⁴⁵

V. CONCLUSION

The distance learning movement has gained significant momentum, and seems poised for substantial growth. Still, in the area of legal education, distance learning faces significant challenges. Chief among these challenges may be the “all or nothing” mentality of many critics of distance learning who fear that distance learning will replace traditional “bricks and mortar” legal education. This notion, however, is simply unfounded. Distance learning efforts will supplement, rather than replace, traditional legal education in a way that will benefit the legal profession and legal academia as a whole. The challenge is how to best achieve the proper balance of both conventional and distance learning and determining which aspects of current legal education must be supplemented, modified, or replaced by distance learning systems.

Regardless of the particular way in which distance education is introduced into the legal education, it is inevitable that it will become a part of legal education soon enough. Many other crucial industries have progressed tremendously with the advent of modern technology. The development of railroads, telegraphs, and telephones made distance commerce an integral part of the modern economic climate. The creation of computing systems, first fixed and cumbersome, now smaller and more widely available, has brought great efficiency and wealth production. Modern miniaturization, wireless technology, and the convergence of computing and communications systems offer even greater mobility and volume of

⁴⁴ See Vicky Phillips, *Online Law Schools Inch Closer To ABA Accreditation*, <http://www.geteducated.com/hot-careers/justice-law-legal-studies/442-online-law-schools-aba-accreditation> (noting existence of a legal education consultancy that studies best practices for online learning to eliminate “resistance that is slowing adoption of online legal education.”).

⁴⁵ The ABA recently established a new task force to study the future of legal education. The task force will address concerns about the cost of law school and the “delivery of legal services in a changing legal market.” Mark Hansen, *ABA Task Force To Study Future Of Legal Education* (Aug. 9, 2012), http://www.abajournal.com/news/article/aba_task_force_to_study_future_of_legal_education.

2013]

DISTANCE LEARNING

15

data transfer. Given the power and ubiquity of technology, governments, businesses, and institutions, including law schools, will feel the pinch of sharp competition if they cannot adapt to new technology and new social currents. Thus, legal education cannot, and should not, continue to resist distance learning efforts that accommodate the needs of students in an increasingly mobile and technological world.